IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.119 OF 2006

Shri.Madhukar Keshawrao Deshpande .. Appellant.

Versus

Shri.Shripal Shivappa Maisale .. Respondent.

Ms.A.R.S.Baxi for applicant.

Mr.A.A.Garge for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 5th October, 2007.

P.C.:

1. Heard Ms.Baxi, appearing for the Appellant and Mr.Garge, appearing for the Respondent. Perused the concurrent Judgements, rendered in the suit filed by the respondent.

2. The suit was filed for perpetual injunction in respect of suit property. The suit property is a common lane, situate between C.S.Nos.1475, 1476 and 1468 so also 1469. It runs East-West and admeasures about 28.70

sq.mtrs. The suit lane and the house property bearing C.S.Nos.1469, 1471 and 1475 were originally belonging to one Tatoba Chougule. A partition suit was filed in the Court of Civil Judge, Junior Division, Miraj, bearing suit No.224 of 1964, which was decreed and the wife and son of Tatoba were given 2/3 share. The final decree proceedings on the basis of the judgement and decree were initiated. The partition was made and the said wife and son of Tatoba obtained possession of their 2/3 share on 16th January, 1977. For access to their house property, certain rights were created in favour of the wife and son of Tatoba.

3. The plaintiff purchased the said C.S.Nos.1469 and 1475 from the wife and son of Tatoba on 20th July, 1982 under registered Sale Deed. The defendant purchased house property bearing C.S.No.1468 and 1476 on 8th August, 1990 under registered Sale Deed. The dispute between parties was on the access to the respective properties. That dispute led to the filing of the civil suit for perpetual injunction.

4. The Trial Court and the Lower Appellate Court on the basis of materials produced, including the map and execution proceedings held that the predecessor in title of the plaintiff was granted the share in the suit lane.

It is that share which is transferred to the present plaintiff, respondent before me. In such circumstances, the appellant-defendant cannot restrain the respondent from utilising and enjoying that share.

5. The argument raised before me by Ms.Baxi is that the predecessor in title of the present appellant was not a party to the final decree proceedings. His name was expressly deleted, even in the decree passed in R.C.S.No.24 of 1964. In such circumstances, the proceedings were binding upon him.

6. I am unable to accept this contention because the Courts below have placed reliance not only upon the final decree proceedings but other materials also. Mr.Garge is right in placing reliance upon the pleadings and oral and documentary evidence. The deposition of the parties before the Courts would have to be read as a whole. So read, there are clear admissions given by the appellant-defendant with regard to the share of the predecessor in title of the respondent. It is not as if the lane is an exclusive property of the predecessor in title of the defendant the appellant before me. This is not a stage where re-appreciation and re-appraisal of the material is permissible.

7. I have perused the judgements of the Courts below with the able assistance of the learned counsel appearing for both sides. I am of the view that the Lower Appellate Court has rightly relied upon the admissions so also the contents of the Sale Deed of the appellant and the testimony of the surveyor Mr.Baburao Rane. The approach of the Courts below in relying upon this material so also the map in the final decree proceedings cannot be said to be perverse or vitiated to an extent which will warrant interference in second appeal.

8. No substantial question of law is raised. Second Appeal is thus devoid of any merits and the same is dismissed accordingly.

9. In the light of the dismissal of the Second Appeal Civil Application No.213 of 2006 does not survive and is disposed off accordingly.

(S.C.Dharmadhikari, J.)